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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Inter-Carrier Compensation)
for ISP-Bound Traffic)

CC Docket No. 99-68

To: The Commission

COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits its comments in response to the Notice of Proposed Rulemaking in the above-referenced proceeding.^{1/} As shown below, the Commission should not abandon the pro-competitive framework forged at great cost of time and expense in the *Local Competition Order*.^{2/} Simply declaring direct FCC jurisdiction over a subset of calls exchanged by local exchange carriers without affirming a reasonable system of intercarrier compensation for jointly-provided calls to ISPs is unthinkable. Only a system that adopts existing transport and termination rates determined under Sections 251 and 252 of the Communications Act will advance the goals of the *Local Competition Order*.

^{1/} Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic, *Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68*, FCC 99-38, CC Docket No. 96-98, CC Docket No. 99-68 (rel. Feb. 26, 1999) (the "Notice"). As Cox explained in its comments and *ex parte* filings prior to the Notice, it continues to believe that local calls to Internet service providers ("ISPs") are subject to reciprocal compensation under Section 251(b) of the Communications Act. 47 U.S.C. § 251(b).

^{2/} Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499 (1996) (¶ 55) (the "*Local Competition Order*").

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Cox has an interest in this proceeding because it has made an unqualified commitment to providing facilities-based competitive local exchange service. Cox has spent billions of dollars of shareholder money upgrading its cable plant to make these new, competitively priced services possible. Through subsidiaries, it has obtained authorization as a competitive local exchange carrier ("CLEC") in thirteen states. Cox's telecommunications services are provided to both residential customers and business customers, including ISPs.

This proceeding is significant to the development of local telephone competition in the United States. Incumbent local exchange carriers ("ILECs"), through this proceeding and litigation in nearly every state in the country, have sought to prevent CLECs from being compensated for the costs of completing calls routed to their ISP customers, even when those same ILECs earlier had argued just as strenuously that those calls must be subject to reciprocal compensation.^{3/} Indeed, many ILECs that previously claimed that all carriers must be compensated for their costs of terminating calls from other local carriers now argue that ISP-bound calls should be subject to "bill and keep" rules.^{4/}

The ILECs have taken these positions because they hope to limit the revenues and financial health of CLECs in any way possible. In other words, the impetus for the ILEC efforts is not (and never has been) to enable fair competition, but to avoid the consequences of

^{3/} See, e.g., Letter of Alexander V. Netchvolodoff, Vice President, Public Policy, Cox Enterprises, Inc. to William E. Kennard, Chairman, FCC, Sept. 24, 1998 (quoting Bell Atlantic representatives at Cox-Bell Atlantic Virginia arbitration on treatment of ISP-bound traffic), filed as a written *ex parte* communication in CC Docket No. 96-98.

^{4/} Obviously, the ILEC-preferred solution of imposing interstate access charges on calls to ISPs is not one the Commission is prepared to adopt. *Notice*, ¶ 36. The Commission should continue to reject this approach.

their own initial negotiating strategy of demanding high reciprocal compensation rates from parties with lesser bargaining power. The ILECs now seek to reverse field to ensure that any significant commercial successes enjoyed by CLECs operating pursuant to voluntary or arbitrated interconnection agreements under the 1996 Act will be negated by a regulatory regime that favors incumbents.

In that context, the Commission must adopt clear and straightforward rules that do not penalize CLECs for providing service to ISPs, and that ensure that *all* LECs are compensated for their costs of terminating ISP-bound traffic. While Cox concurs that the starting point in determining compensation should be carrier negotiations, experience shows that negotiations alone will not be enough. Those negotiations must be backed up by concrete federal rules that require compensation for the transport and termination of ISP traffic at default levels if negotiations fail. As shown below, the default compensation levels should be set equal to the state-defined local reciprocal compensation amounts because there is no difference between the costs of terminating ISP-bound traffic and other traffic within a local calling area. This approach not only will provide a necessary and reasonable backstop to negotiations; it also will eliminate the unnecessary administrative burdens that other approaches would entail.

I. A Policy Which Merely Favors Negotiated Compensation for Internet-Bound Traffic Will Severely Disadvantage CLECs and Will Leave Significant Policy Matters Unsettled.

The *Notice* proposes that carriers should, in the first, instance, address compensation for ISP-bound traffic through negotiations, with some backstop mechanism if negotiations

fail.^{5/} Cox supports this general approach, but only if the backstop is a binding national mechanism and is sufficiently specific to prevent ILECs from gaming the system. Simply put, a regime that relies solely on negotiation cedes the process to the negotiators without any guidance. Such a regime will allow ILECs to use their overwhelming bargaining power to deny CLECs compensation for their termination of ISP-bound traffic.

A regime that starts with negotiation is desirable for many reasons, some of which are outlined in the *Notice*.^{6/} In practice, however, negotiation will not work without reasonable pricing guidelines. Even with such guidelines negotiation often fails, especially if one party has little incentive to reach any agreement. For instance, Cox and Bell Atlantic engaged in a lengthy, expensive arbitration in Virginia before reaching an interconnection agreement even though Cox did not seek the addition of any controversial terms to Bell Atlantic's draft. Other CLECs have had even more difficulty in obtaining interconnection agreements, despite the time limits on negotiation and arbitration in Section 252.

To limit the likelihood that negotiations will fail, the Commission should adopt specific backstop rules that will inform the negotiations and that will govern arbitration when negotiation fails.^{7/} In practice, negotiation is unlikely to succeed without this backstop.

^{5/} *Notice*, ¶ 29.

^{6/} *Id.* Cox does not, however, endorse the assumption in the *Notice* that the cost characteristics of ISP-bound traffic might differ from those of other locally-routed traffic. See *infra* Part II.

^{7/} The Commission has this power whether or not ISP-bound traffic is jurisdictionally interstate. If this traffic is interstate, then the Commission has the power to adopt pricing rules under its general Title II authority. If this traffic is intrastate, then it is subject to Sections 251 and 252, and the Commission's power to adopt implementing rules for these

Although the *Notice* suggests that the “economic characteristics” of ISP-bound traffic could “make voluntary agreements among the parties easier to reach,” that is not the case because cost characteristics do not create incentives for ILECs to bargain with CLECs. As Cox explained in its initial comments in the *Local Competition* proceeding, incumbents enjoy substantial advantages over new entrants in interconnection negotiations, largely because incumbents have far less to lose if there are delays in completing the negotiations.^{8/} The Commission correctly recognized these concerns in the *Local Competition Order*, when it decided to adopt national standards for interconnection negotiations, relying in part on “[t]he inequality in bargaining power between incumbents and new entrants.”^{9/}

These concerns are particularly acute in any negotiations regarding compensation for termination of ISP-bound traffic. ILECs have acknowledged that they have literally hundreds of millions, and perhaps billions, of dollars at stake. Thus, ILECs have very strong incentives to delay or sabotage negotiations so as to avoid paying compensation for ISP-bound local traffic for as long as possible. Indeed, these incentives already are at work. In the absence of

sections was affirmed in *Iowa Utils. Bd. AT&T Corp. v. Iowa Utils. Bd.*, 119 S.Ct. 721 (1999).

8/ See Comments of Cox Communications, Inc., CC Docket 96-98, filed May 16, 1996, at 45-46 and Exhibit 3 (Declaration of Gerald W. Brock) (the “1996 Brock Declaration”). As Dr. Brock described, the economic literature establishes that incumbents enjoy substantial bargaining advantages and that one of the most effective incumbent strategies is delay. 1996 Brock Declaration at 2-3, 4. Relevant excerpts from the 1996 Brock Declaration are attached to these comments as Exhibit 1. As described in more detail below, the ILECs benefit from delays in determining compensation for ISP-bound traffic as well, while continued delays will hurt CLECs.

9/ *Local Competition Order*, 11 FCC Rcd at 15528.

specific interim compensation rules that would apply while the *Notice* is pending, ILECs have initiated an avalanche of litigation to forestall the effectiveness of previous state orders requiring compensation to be paid and to forestall states from acting in pending disputes.^{10/} Without specific national backstop rules, this pattern will continue and ILECs will have no incentive to negotiate any arrangements for compensation for ISP-bound local traffic, let alone arrangements that are reasonable and fair to all parties.

II. The Commission Should Set Default Compensation for Internet-Bound Traffic Within a Local Calling Area Equal to the Compensation for Transport and Termination of Local Traffic.

The *Notice* suggests a variety of payment arrangements that might be adopted to compensate carriers for the costs of terminating ISP-bound local traffic.^{11/} The *Notice* does not, however, consider the most appropriate payment arrangement for ISP-bound traffic: the reciprocal compensation rates for local calls adopted in carriers' interconnection agreements or determined by State commissions. As shown below, these rates should be adopted as the default compensation rate for ISP-bound local traffic because there is no cost difference between the two types of traffic and because adopting the same rates for termination of ISP-bound calls and local calls is administratively efficient for both carriers and regulators.

^{10/} See, e.g., Motion for Expedited Schedule, *Bell Atlantic v. FCC*, (D.C. Cir.) (Case No. 99-1094 and consolidated cases) (arguing that states should not be permitted to determine whether ISP-bound traffic is within scope of interconnection agreement reciprocal compensation provisions); see also "Bell Atlantic-Mass. to Escrow Reciprocal Compensation Fees," TELECOMMUNICATIONS REP., Mar. 29, 1999, at 30; "BellSouth Seeks to Strengthen Federal Appeals of State ISP Orders," COMM. DAILY, Mar. 9, 1999 at 1.

^{11/} *Notice*, ¶ 29.

First, the costs of terminating local traffic to ISPs and of terminating local traffic to other end users are the same.^{12/} Calls to ISPs and to other end users are routed in the same way and use the same facilities. As explained in the attached statement of former Common Carrier Bureau Chief Dr. Gerald W. Brock, “[n]one of the distinctions between ISP calls and average calls relate to a cost difference for handling the calls.”^{13/} Indeed, the only thing that distinguishes calls to ISPs from other calls is the customer premises equipment (“CPE”) at the receiving end of the calls, and the Commission as a bedrock element of its competition policy, has forbidden ILEC pricing discrimination on the basis of CPE for nearly twenty years.^{14/}

As noted above, the *Notice* posits alternative approaches to compensating carriers for terminating local calls to ISPs. These same approaches, however, were considered and **rejected** when the Commission adopted the *Local Competition Order* in 1996.^{15/} While it is possible that flat-rated, capacity-based charges, or a combination of set-up charges and lower per-minute charges would more accurately reflect the costs of both ISP-bound calls and other

^{12/} The Commission plainly has the power to adopt rates for interstate services that are based on the rates charged for other services, so long as there is a basis for doing so. For instance, in the *Local Competition Order*, the Commission adopted existing interstate dedicated switched transport rates as the default proxy for unbundled dedicated transmission links. *Local Competition Order*, 11 FCC Rcd at 15909. It is not so certain, however, that the Commission has the power to give the States the authority to separately determine an interstate rate, as the *Notice* proposes. *Notice*, ¶ 30.

^{13/} Gerald W. Brock, “The Cost of Local and ISP Traffic,” Apr. 12, 1999, attached hereto as Exhibit 2 at 1 (the “Brock Statement”).

^{14/} *Id.* at 2-3.

^{15/} *Local Competition Order*, 11 FCC Rcd at 16025-7 (adopting per minute rates for reciprocal compensation). Of course, nothing would prevent two carriers from adopting any compensation method they choose in a voluntary agreement. See 47 U.S.C. § 252(a).

local calls, there is no basis to conclude that choosing different compensation mechanisms for ISP-bound calls than for other locally-routed calls will lead to more accurate overall compensation. Indeed, so long as the costs are identical, there is no benefit to adopting a different regime for ISP-bound calls than for other calls. In fact, such a decision would be anticompetitive inasmuch as it would disadvantage CLECs because it would delay their receipt of compensation.

Moreover, adopting a single compensation mechanism for ISP-bound calls and other local calls would avoid imposing unnecessary costs on carriers and regulators alike. First, using a single rate structure will avoid duplicative, and potentially conflicting, rate determinations regarding compensation for “regular” local traffic and ISP-bound traffic. Experience shows that any proceeding to determine rates will be lengthy, contentious and expensive, to the benefit of incumbents and to the detriment of new entrants. There is no reason to put any party through such a proceeding if, as shown above, there is no actual difference in costs. It would be especially inappropriate to force CLECs to engage in such litigation because the only effect of the litigation would be to impose unnecessary expenses and delays in their receipt of compensation.

In addition, it would be impracticable to adopt different compensation for ISP-bound local calls and other local calls.^{16/} As a practical matter it is impossible to determine with certainty whether traffic is, in fact, bound for the Internet; even ISPs use some lines for

^{16/} In addition, the Commission has acknowledged that there are intrastate calls to ISPs. *See, e.g., Notice*, ¶ 18. Presumably at least some of these calls will be subject to Section 251(b) reciprocal compensation.

Internet access and some lines for other purposes, such as customer service. At the same time, other local exchange customers have traffic patterns that are similar to those of Internet service providers, including restaurants that offer delivery, and houses with teenage children, and it is impossible for a carrier to determine from a traffic pattern what use is being made of a telephone line.^{17/} Thus, if the Commission were to adopt rules that permit different compensation rates for ISP-bound traffic than for other traffic, carriers would be required to make what would be, at best, guesses about the nature of the traffic they carry. There inevitably would be “numerous disputes regarding the definition, measurement and classification calls,” and additional litigation that would further delay the payment of compensation.^{18/}

Even assuming that ISP-bound traffic could be distinguished from other traffic, the costs of separating it would be significant. Carriers would have to develop mechanisms for separating or measuring calls to specific telephone numbers, a capability that is unnecessary in today’s networks.^{19/} Under the terms of many interconnection agreements, carriers might be required to create separate trunks for ISP-bound traffic, adding new costs and reducing the efficiency of network deployment.

^{17/} Brock Statement at 1-2. Other end users that receive calls or that have disproportionately long holding times include ticket sales companies, travel agencies and customer service facilities. Computer bulletin boards, such as those operated by local user groups, also have traffic patterns similar to those of ISPs.

^{18/} *Id.* at 4.

^{19/} This could require Commission intervention. *See id.*

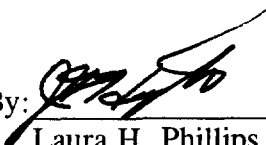
Taken together, the administrative and implementation costs of adopting different compensation mechanisms for ISP-bound traffic and other local traffic would be so great as to wipe out any possible benefits from doing so. When, as shown above, ISP-bound traffic has the same cost characteristics as other local traffic, there is no justification for incurring these costs. Thus, the Commission should adopt rules that set the default compensation for locally-routed ISP-bound traffic equal to the reciprocal compensation rate for other local traffic.

III. Conclusion

For all these reasons, the Commission should adopt rules in accordance with the proposals contained herein.

Respectfully submitted,

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Exhibit 1

Excerpts from 1996 Brock Declaration

BARGAINING INCENTIVES AND INTERCONNECTION

Gerald W. Brock

Prepared for Cox Communications, Inc.

I. Introduction

Negotiations among parties for interconnection will in general lead to more efficient arrangements than mandated uniform interconnection rules, but negotiations will create poor results if one party has greatly unequal bargaining power or if negotiations take excessive time. The incumbent LECs are in a far stronger bargaining position than their potential competitors because their current market dominance allows them to continue in business without interconnection agreements while the potential competitors need interconnection agreements in order to conduct business. The incumbent LECs have an incentive to extend the bargaining process and use their competitors' need for quick resolution as a method of securing agreement to terms advantageous to the incumbents. The FCC can improve the expected outcome of the bargaining process by adopting rules that clarify the statutory standards and narrow the range of issues to be negotiated, and by prescribing interim Bill and Keep until negotiations are complete in order to create incentives for incumbent LECs to expedite the bargaining process.

II. FCC Rules Are Needed to Expedite Agreement and Equalize Bargaining Power.

The Telecommunications Act of 1996 (TCA) leaves the details of interconnection agreements to negotiations among with affected parties, with provision for binding

arbitration in case of failure to agree. Negotiations among parties will in general lead to more efficient arrangements than mandated uniform interconnection rules because the parties can take advantage of their superior knowledge of the relevant conditions and can take account of special cases and local variations in interconnection requirements.

However, the benefits of negotiation are subject to two qualifications:

- (1) There must not be greatly unequal bargaining power that would cause one party to be able to impose an unfair solution on the other party;
- (2) The negotiations must reach a conclusion relatively quickly without allowing either party to excessively prolong the negotiating process.

In general, incumbents have an advantage over entrants in bargaining for interconnection because the incumbents have less to lose from delays in reaching a conclusion. The incumbent can continue in business without an interconnection agreement, but the entrant generally cannot initiate business without an interconnection agreement. In theoretical models of bargaining, the time horizon (or discount rate) of the bargaining parties makes a great difference in the outcome. In an often cited article, Ariel Rubinstein examined the theoretical bargaining problem in a very simple case: two parties bargain over the division of a fixed sum of money. Neither receives anything until agreement is reached. Each party in turn makes an offer for the division of the money, which may be accepted by the other party (ending the game) or rejected and followed by a counteroffer. Rubinstein examined the case in which the parties incur a discount factor on the value of the money received after agreement is reached for each period in which bargaining continues. He found that the only "perfect equilibrium" result gave a

substantial bargaining advantage to the party with the least cost from delay.¹ That is, a party that has a high discount rate on the gains from the money received at the end of the bargaining has an incentive to accept even seemingly unfair offers from the party with the lower discount rate rather than prolong the bargaining process. The results can vary substantially from the “focal point” solution of a 50-50 split. If, for example, party 1 has a discount rate of 8 percent (a fixed sum of money is worth 92 percent of its original value if received one period later) while party 2 has a discount rate of 15 percent, and all other characteristics are identical, the predicted theoretical division of the money under the Rubinstein bargaining structure is 68 percent for party 1 and 32 percent for party 2.

The structure of interconnection arrangements is far more complex than simple bargaining over a fixed sum of money. The transactions cost literature shows that pure market contracts are difficult to reach when there is “asset specificity” and uncertainty.² In other words, if firms have to make specific investments that are only valuable so long as the agreement remains in place, and if there is uncertainty about future events so that it is necessary to modify the agreement from time to time, then pure “spot market” economic transactions do not lead to optimal results. A textbook example is the case of a coal mine and a specialized railroad leading to it. Neither party wants to make the investment in assets that are only useful when complemented by the other party’s investment unless there is a strong expectation of a mutually satisfactory adjustment of the agreement between the parties to account for unforeseen events.

¹ Ariel Rubinstein, “Perfect Equilibrium in a Bargaining Model,” *Econometrica*, Vol. 50 (1982), pp. 97-109.

² Oliver E. Williamson, *Markets and Hierarchies: Analysis and Antitrust Implications* (New York: The Free Press, 1975); Oliver E. Williamson, *The Economic Institutions of Capitalism* (New York: the Free Press, 1985).

The transactions cost framework is relevant to the interconnection issue because there is considerable uncertainty about the ideal arrangements and the necessary modifications to those arrangements to account for changing business plans and advances in technology, and parties will make some specific investments based on the negotiated interconnection agreements. Because the business plan and investment of a competitor will be significantly affected by the interconnection agreement, it needs confidence that an interconnection agreement and appropriate modifications to that agreement to take account of changing circumstances can be negotiated before making the investment necessary for entry.

Christopher Weare has argued that the complexity of transactions tends to increase the power of dominant firms. According to Weare:

When achieving interoperability involves transactional complexity, a dominant firm has access to a powerful, yet subtle strategy to foreclose rivals: the refusal to cooperate. When significant technical uncertainties are present, the development of interoperability requires active coordination... A dominant firm, however, can simply refuse to extend the cooperation required to address these contractual hazards, thereby imposing significant transaction costs on its rivals... Moreover, this threat is wholly credible because the dominant firm incurs no added costs by such actions.³

³ Christopher Weare, "Organizing Interoperability: Economic Institutions and the Development of Interoperability," in Gerald Brock and Gregory Rosston, eds. The Internet and Telecommunications Policy: Selected Papers from the 1995 Telecommunications Research Conference (Mahwah, N.J.: Lawrence Erlbaum, in press), Chapter 9.

While the arbitration proceedings specified in the Act are a useful backstop to negotiation, successful bargaining framework rules will minimize the role of arbitration. Arbitration is a costly, time-consuming, and imperfect form of dispute resolution. As Jean Tirole states:

External arbitration is likely to be costly. Outsiders may not possess the relevant information with which to formulate an efficient decision. They may have to hire experts or spend time learning about the specificities of the situation.⁴

FCC rules implementing the interconnection provisions of the TCA can create a framework to enhance the likelihood that the parties can reach agreement without resort to arbitration, and can narrow the range of reasonable options for the arbitrator to take if arbitration is necessary.

⁴ Jean Tirole, The Theory of Industrial Organization (Cambridge, MA: The MIT Press, 1988), p. 30.

Exhibit 2

The Cost of Local and ISP Traffic

The Cost of Local and ISP Traffic
Gerald W. Brock
Professor of Telecommunication
The George Washington University

April 12, 1999

This note considers the cost of providing access to an Internet Service Provider (ISP) over a switched voice grade circuit compared to the cost of providing an intrastate voice call to the same location. It argues that there is no meaningful cost difference between the two cases because the only significant difference between the two is the type of customer premises equipment (CPE) utilized in the communication. Because there is no difference in the cost of handling ISP access calls and voice calls, compensation between carriers for jointly provided ISP access service should be identical to the compensation between carriers for jointly provided voice calls.

Because the Enhanced Service Provider (ESP) exemption allows ISPs to be served through state tariffs rather than interstate access tariffs, the typical arrangement is that a customer places the call initiating an ISP session using an ordinary local line paid for at the state tariffed rate. The ISP also orders service from the telephone company's state tariffs. The distinctions between an ISP and average telephone customers are:

- (1) The ISP receives primarily incoming calls because service requests are initiated by the customer placing a call to the ISP;
- (2) The peak calling time is later in the day than the average peak because many residential customers initiate Internet sessions in the evening;
- (3) Holding times are longer for the average ISP call than for the average non-ISP call.

None of the distinctions between ISP calls and average calls relate to a cost difference for handling the calls. The pattern of the ISP calls differs from the average, but so does the pattern of many different identifiable classes of customers. Take-out food establishments, for example, receive primarily incoming calls. Households with teenage children frequently have longer holding times than the average.

Consider three scenarios for a call initiated by person A and received by person B:

- (1) Person A is a close friend of person B and routinely places long evening calls;
- (2) Person A is a prolific writer and sends a long fax containing the day's output to person B each evening;
- (3) Person A is a customer of ISP B and logs on each evening to check e-mail and visit web sites.

All three scenarios impose the same obligations and costs on the Local Exchange Carrier (LEC). The LEC must receive the signaling information from person A, set up a switched voice grade path through the network to person B, and maintain a circuit between the two points for the duration of the call. The LEC has no need to distinguish among the scenarios in order to provide the requested service. If two LECs jointly provide the call, there is still no need to distinguish among the three scenarios. For example, suppose that A is a customer of the ILEC and B is a customer of a CLEC. In all three scenarios, the ILEC sets up a circuit from person A to the interconnection point with the CLEC and the CLEC sets up a circuit from the interconnection point to person B. The circuit remains open across both carriers for the duration of the call. Neither carrier sees any difference in the cost of originating or terminating calls in the three scenarios.

The difference in the three scenarios is due entirely to the type of Customer Premises Equipment (CPE) utilized with the LEC switched voice grade circuit. In scenario 1, a voice handset is used on each end while in scenario 2 a fax machine is used on each end, and in scenario 3 a modem is used on each end. Prior to the Commission's Computer Inquiry II decision in 1980, the telephone companies could and did discriminate among customers according to the type of CPE that they utilized. For example, tariffs for "data lines" (utilizing modems on each end) differed from tariffs for "voice lines" (utilizing voice handsets on each end). The Commission's decision to deregulate CPE and allow the customer to attach any kind of CPE to a telephone company provided line has eliminated discrimination based on CPE and provided a rich array of opportunities for consumers and companies. The rapid spread of networks of personal computers communicating over switched voice grade lines has occurred in part because the Commission's CPE policy has allowed consumers great freedom to utilize the phone lines for computer communication without interference or price discrimination from the telephone companies.

The successful policy of prohibiting discrimination based on the type of CPE that has been in effect for almost twenty years should be continued. Telephone companies should not be allowed to discriminate between computer-to-computer communication utilizing switched voice grade lines with customer supplied modems and person-to-person communication utilizing switched voice grade lines with customer supplied voice handsets. Discrimination among types of calls based on the CPE utilized will be created if payments between companies for jointly provided calls differ according to the type of call. The Commission should require that compensation between companies for jointly

provided calls to ISPs be identical to the compensation between companies for jointly provided voice calls between similarly situated locations.

Requiring the same compensation between companies for jointly provided calls to ISPs as for jointly provided voice calls between similarly situated locations will be simple and easy to administer. Creating a difference in compensation according to type of call will require extensive Commission resources to implement and enforce the policy. It will be necessary to set up methods to distinguish "interstate" calls to ISPs from identical "intrastate" calls. The Commission will most likely be called upon to settle numerous disputes regarding the definition, measurement, and classification of calls. Such disputes are the natural outcome of a policy of charging different rates for physically identical services and the incentives that such price discrimination creates for the parties to classify traffic in the way most favorable to themselves. It will also be necessary to set up an arbitration mechanism parallel to the one utilized by the states in order to settle disputes over the appropriate intercarrier compensation for jointly provided calls to ISPs. The Commission has recently reaffirmed that the interstate access charge rules should not be applied to ISPs. If the Commission rejects the administratively simple policy of requiring the same compensation between companies for jointly provided calls to ISPs as for jointly provided voice calls between similarly situated

locations, it should be prepared to devote substantial resources to creating and enforcing an intercarrier compensation mechanism separate from either the access charge structure or the local exchange structure.

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CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a secretary at Dow, Lohnes & Albertson, PLLC, do hereby certify that on this 12th day of April, 1999, a copy of the foregoing "Comments of Cox Communications, Inc." was sent by first-class mail, postage prepaid, to the following:

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